

HN 61
.W3
Copy 1

*Received December 10th 1850.
ded Vol. 28. Page 319*

No. 15

THE REFORM SPIRIT OF THE DAY.

AN

ORATION

BEFORE

THE PHI BETA KAPPA SOCIETY

OF

HARVARD UNIVERSITY,

JULY 18, 1850.

BY

TIMOTHY WALKER.

BOSTON AND CAMBRIDGE:

PUBLISHED BY JAMES MUNROE AND COMPANY.

1850.

THE REFORM SPIRIT OF THE DAY.

AN

ORATION

BEFORE

THE PHI BETA KAPPA SOCIETY

OF

HARVARD UNIVERSITY,

JULY 18, 1850.

BY

TIMOTHY WALKER.



BOSTON AND CAMBRIDGE:

PUBLISHED BY JAMES MUNROE AND COMPANY.

1850.

HN 61
W3

Entered according to Act of Congress, in the year 1850, by
JAMES MUNROE & Co.,
in the Clerk's Office of the District Court of the District of Massachusetts.

CAMBRIDGE:
METCALF AND COMPANY,
PRINTERS TO THE UNIVERSITY.

ORATION.

MR. PRESIDENT AND BRETHREN : —

AFTER many years of separation, I come once more to this ancient seat of learning, my revered Alma Mater. And I come with mingled emotions of joy and fear.

I rejoice to meet again the sons of Harvard, within these venerable shades, and feel once more the hallowed influences of this place. How often, in my pilgrimage beyond the mountains, have I longed to revisit this Mecca of my youth!

I rejoice, too, in the occasion of this reunion. I count it a great privilege, that I am permitted to attend the anniversary exercises of this time-honored Society, into which it was my good fortune and my pride to be initiated, just one fourth of a century ago.

But, on the other hand, I fear for the part which I am called upon to take in these solemnities. For in such an assemblage of scholars and *savans*, — before

LC Control Number



tmp96 027172

such an array of beauty and wit, of genius and learning, — the selectest of the land, — what can I hope to utter, that shall be at all worthy of the place, the presence, or the occasion? How dare I, — whose mind has been chained down for years to one engrossing and exacting pursuit, — who have so seldom spoken, unless to courts and juries, — so seldom written anything but the jargon of the law, — how dare I, — thus hackneyed by the dull and laborious routine of a lawyer, — whose memory of Greek is now scarcely that of a “departed joy,” and whose Latin is reduced to phrases which Cicero would not understand, — how dare such a one as I presume to officiate at this high literary festival?

I have asked myself these questions very often, since, in an unguarded hour, I accepted your too flattering invitation. Once, when I was some years younger, I had the wisdom to decline such an honor. And why did my good genius desert me now? Alas! I know not, unless it be that one of the alleged requisites of my profession has somehow outgrown the rest. But regrets are now too late. I am here to attempt what is called an Oration; and in the selection of a subject, I have considered, not how I may, for an hour or so, best entertain or instruct such an auditory, but how I may probably least fatigue them. I shall name my subject

THE REFORM SPIRIT OF THE DAY;

and, discoursing upon this text, I shall have occasion to refer to some of the characteristic features of the times. I may as well add, that, from necessity, as well as inclination, I shall use great plainness of speech, attempting no rhetorical ornament whatsoever.

If there be any single trait by which the historian will distinguish the present from all past ages, it is the all-pervading enthusiasm, or, I may say, rage for REFORM. It agitates every nation, and all classes; and it comprehends nearly every subject of thought and action. Everywhere, on every matter, and in all ways, the great heart of humanity throbs for reform. The shout that goes up from myriad voices, all over the globe, is, — Let old things be done away, and all things become new; let the old landmarks be obliterated. We will no longer walk in the ancient paths; no longer work with the ancient tools; no longer think in the ancient formulas; no longer believe the ancient creeds. The times are sadly out of joint. We must reform them altogether. To this end, we pronounce antiquity a humbug, precedent a sham, prescription a lie, and reverence folly. We have been priest-ridden, and king-ridden, and judge-ridden, and school-ridden, and wealth-ridden, long enough. And now the time is come to declare our independence in all these respects. We cannot, in-

deed, change the past, — that is for ever immutably fixed ; but we can repudiate it, and we do. We can shape our own future, and it shall be a glorious one. Now shall commence a new age, — not of gold, or of silver, or of iron, but an age of emancipation. We will upheave society from its deepest foundations, and have all but a new creation. In religion and politics, medicine and law, morals and manners, our mission is to revolutionize the world. And therefore we wage indiscriminate war against all establishments. Our ancestors shall no longer be our masters. We renounce all fealty to their antiquated notions. Henceforth to be old is to be questionable. We will hold nothing sacred which has long been worshipped, and nothing venerable which has long been venerated. These are the GLAD TIDINGS which we, the reformers of the age, are commissioned to announce.

Reform, then, is the watchword of the hour. And now what signifies this far-resounding word? Literally, to remake, reconstruct, recreate. But it does not necessarily signify to improve, to make better, to exalt. When we have pulled one thing down, and put another in its place, we have certainly achieved a reform ; but whether it shall prove a benefit or an injury, a blessing or a curse, is problematical. So that a reformer, however benevolent his designs, is not necessarily a benefactor, but may, by possibility, be the greatest of malefactors.

For let this be remembered, — all reform begins with destruction. This must be the first step. Something which has existed and answered a purpose — perhaps may have been useful, and cherished by the tenderest associations — is first to be demolished. The old mansion, which has so long sheltered us, must be torn down before the new one can be commenced. This is, in itself, an evil, out of which good may come, — may, but not must. This, in respect to any reform, depends upon several contingencies. How long must we wait for the substitute, sleeping, as it were, in the open air? What will be its character when we get it? How long will it take us to become used to it, and to test it, so that we can say, with certainty, whether we have gained a better thing? These are very pregnant questions; and the conclusion is, that all reform is, at first, mere experiment for good or evil, as the event may prove, but always attended with inconvenience in the beginning.

Again, there is something very dear and precious in the idea of rest, repose, stability. To this state all things in nature tend; and the soul yearns for it as her highest good, — longing to be anchored on some rock of ages. But this spirit of reform is a restless, bustling, disturbing spirit, utterly at war with a state of repose. This, again, is in itself an evil, though it may be more than counterbalanced

by the supervening good. And the evil itself would be greatly diminished, if reforms could be conducted slowly and deliberately, giving time to adapt ourselves gradually to them. But, unfortunately, moderation rarely suits the temper of reformers. Their zeal is so fervent, that they cannot brook delay. What they have to do must be done quickly. They reject the good old maxims of "Hasten slowly," and "Slow and sure"; and all must be hurry, flurry, agitation. Down goes one thing, and up goes another, before you can well say which is up and which is down.

In this hurly-burly, therefore, "we know not what a day may bring forth." We can hardly say, "Sufficient unto the day is the evil thereof"; because, to actual present ills we must add the perplexing fear of change. What, for example, would not the discreet people of France — if such there be — have given, at any time within our memory, for a single year of certain, profound repose? And how otherwise is it with us? What have we, in our institutions, which we can rest upon as established? What, on the contrary, but shocks and revulsions, ups and downs, ins and outs, one doctrine to-day, and the opposite to-morrow, through the endless seesaw of political platforms? Who now has absolute confidence in anything which depends wholly upon men? Who now has an abiding faith in anything human? What is there now, except mathematical truth, which is not called in question?

Truly, this active spirit of reform must achieve a vast amount of substantial good, before it can compensate the world for the evil resulting from this everlasting fluctuation, this distressing uncertainty, this continued instability. If we look to RELIGION, we are constrained to say that the "Ages of Faith" are no more. I read of no sect in which there are not growing divisions and subdivisions, unless it be in the Roman Church; and I think we can discern ominous signs of schism even there. We know that the temporal throne of St. Peter totters; and is not the idea of spiritual infallibility, which has given to that Church its almost miraculous dominion, beginning to lose its despotic power? So I construe the signs of the times. But, however this may be, of one thing I feel sure, as to all sects and denominations, — namely, that in no past age has the mind of Christendom been so shaken by doubts, so harrassed by fears, so agitated, feverish, and distracted, as now, — that at no time has there been so little of fixed, undoubting, impregnable faith. I do not say, so little of religion, but of faith. I repeat, therefore, that the ages of faith are no more.

And the same may be said of LOYALTY. Truthfully speaking, there is now no such thing as settled law, meaning thereby that potent municipal voice which men reverence as an oracle, and obey without question, simply because it is the law. What is there

extant now, which at all realizes the magnificent conception of Sir William Jones?

“ When sovereign Law, that state’s collected will,
O’er thrones and globes elate
Sits empress, crowning good, repressing ill ;
Smit by her sacred frown,
The fiend, Discretion, like a vapor sinks,
And e’en the all-dazzling crown
Hides his faint rays, and at her bidding shrinks.”

So little of reality is there now in this sublime picture, that one might be almost tempted to call it bombast. I refer not now to Mobs, which have of late become so frequent that they hardly shock us ; for the rabble, when they thus trample upon law, do but follow examples set for them in high places. The fruit we thus reap is of the tree which we have planted. If the thorns have torn us, and we bleed, the fault is all our own. For when each man in power, disregarding the most solemn and well considered determinations, assumes the right to construe even our organic law as he chooses to understand it ; and when judges, from our highest benches, feel no scruple in setting aside prior adjudications upon the same point, if it happen to suit their own peculiar notions, I can hardly blame the mob for holding in contempt what is thus made so contemptible. If I speak strongly on this subject, it is because I feel strongly. For who can now venture to declare with confidence what is law, and what is not? I will

hazard the assertion, that there is scarcely now a single principle, even of *constitutional* law, which one can safely say is permanently settled. And in that great aggregate of principles, accumulating from age to age, which we call the *common law*, the confusion and uncertainty are still greater. I hail, therefore, with exceeding satisfaction, the efforts at law reform, so rife throughout the land, at least as far as they converge to one of the points which I will briefly indicate. I refer to what is called CODIFICATION. For I hold it to be a disgrace to this age and country, that so much of our law should remain *unwritten*, — hidden, I may say, in the breasts of our judges, — or, if ascertainable at all, to be ascertained only by ransacking thousands of volumes of Reports and Digests, and then liable to be overruled the very day the search is finished. If the law be really a system of rules and principles, these rules and principles certainly can be collected together, arranged in systematic order, expressed in precise language, and clothed with a legislative sanction, which not one tithe of our law ever yet had. This is my idea of a CODE OF LAW. The object is not necessarily to innovate; but to render certain what is now so deplorably uncertain, and accessible to all what so few can now by possibility know. No wonder that Napoleon, contemplating such an achievement, and overlooking all his victories, should exultingly exclaim, “I shall go down

to future ages, with the Code in my hand!" — or that Gibbon, when summing up his admirable life of Justinian, should say, "When the vain titles of the victories of Justinian shall have crumbled into dust, the name of the LEGISLATOR will be inscribed upon imperishable tablets." In truth, I can conceive of no higher claim to an apotheosis, than that of the framer of a GOOD CODE OF LAW. O, if some Marshall or Parsons, some Pinckney or Story, could have left such a legacy to his countrymen! For to expect so transcendent a boon from any legislative body, as their own work, would be to expect an impossibility. The Justinian of this republic must be a man versed in all the lore of jurisprudence; retired from active labor at the bar, or on the bench; and willing to devote all the energies of mature life to the glorious task before him. When such a man shall appear, I, for one, will rank him above all heroes, sages, or statesmen, — all benefactors or philanthropists, — I will all but worship him. For words can hardly express the extent of his deserving. He, too, will go down to future ages with the code in his hand.

But, descending from these more general views, let us advert to some particular matters, by way of illustration. And to begin where all things hopeful should begin, let us refer to EDUCATION. This should be, to every human being, the most important thing on earth, — the process of all processes. Yet the

great effort now is, so to simplify, abridge, and curtail it, as to make it no process at all. The child must be put through to manhood by express. That forming period once known as youth is now a poet's dream. The child *per saltum* becomes a man, — at least in his own opinion, — and, before his beard is fairly grown, aspires to be a governor, judge, or legislator. The "atrocious crime" now is not, as in the time of Pitt, to be a young, but an old man. For these juvenile men, being several times more numerous than old and experienced men, can, if they so please, band themselves together into young men's parties, and call themselves "YOUNG ENGLAND," or "YOUNG AMERICA," or by some such sonorous title, and thus carry things their own way. We may say, then, in this age of reform, that old men are at a discount, and boys at a premium. But boys are not to blame for this. They but play the part for which we educate them. We have abolished the rod, and dispensed with subordination. Nay, for fear of overtaxing the young brain, as the cant is, we have dispensed with labor also, as far as this is possible. We make the pupil a passive recipient, rather than an active agent. We furnish facilities, instead of imposing tasks, and teach results instead of principles. So that the old and thorough DISCIPLINE of education, in which its chief value consists, is nearly lost sight of, and the child, thus overleaping youth,

precociously becomes a man, eager to contend for the prizes of life. And now to choose a profession ! The probabilities are ten to one, that the choice will be made with an ultimate view to political distinction ; for this is the besetting sin of the age. How many a good mechanic or farmer is every year spoiled by this ambition, as universal as it is foolish, to make a figure before the public ! When will our young men learn that true respectability depends, not upon the place they fill, but how they fill it ; that all honest occupations are, in themselves, equally honorable ; that Franklin, for example, was as truly worthy while working at his printing-press, as when wresting the lightning from heaven, and the sceptre from tyrants ; nay, that, as a lesson to mankind, this humbler part of Franklin's life is of infinitely greater value than that in which he stood before kings, and could look down upon them ; because it illustrates, better, perhaps, than any other historical example, the great truths, that every man must be the founder of his own fortunes, and that no man was ever made great by the accident of birth, or the aid of powerful friends. These circumstances may give him opportunity ; but to avail himself of this opportunity must be his own act. All true greatness is both independent and self-dependent.

But let us look next at the SOCIAL RELATIONS. Here reform is especially busy. I have no time or

wish to refer to Owenism, or Fourierism, or Socialism, in any of its Protean forms; but will seek my illustration in the condition of WOMAN. And what part does she play in the drama of reform? Much certainly has been achieved for her benefit. Her legal rights are beginning to be acknowledged and protected. The legal existence of a married woman is no longer entirely merged in that of her husband. The ancient doctrine was, that husband and wife constitute but one person, and that person is the husband; he being the substantive, and she the mere adjective. Accordingly, Milton makes Eve address Adam, in this submissive strain: —

“ My author and disposer, what thou bidd’st,
 Unargued I obey ; so God ordains.
 God is thy law, thou mine ; to know no more
 Is woman’s happiest knowledge and her praise.”

The argument ran thus: — The husband is generally the stronger. Policy therefore requires that he should have dominion, because in his hands the power supports itself. Give but the legal supremacy to the wife, and she would need external interference in order to maintain it. Or give her an absolute equality, and the effect would be the same. You hold out to her a dangerous lure, when you release her from that necessity of pleasing under which she now acts. Man forgets his self-love while secure of his prerogative. He bears rule over her

person and conduct, and she bears rule over his inclinations. He governs by law; she by persuasion. I am merely stating the argument, as I find it in the books, not justifying it. On the contrary, I look upon the change everywhere going on in the legal condition of woman, whereby she is admitted to something like an equality with man, as one of the very best reforms of the age; and I trust it will not stop here. For I can see neither policy, justice, nor humanity, in many of the doctrines which still exist. They bear every mark of their barbarous origin. Were society now to be reorganized, I feel sure that woman would not be made the helpless thing she now is. It would never enter the mind of a legislator to place her so much at the mercy of man. He who should broach such an idea for the first time, in our day, would be fain to fly from the execrations of Christians, and herd with Turks, who have been said

“To hold that woman is but dust,
A soulless toy for tyrant’s lust.”

But all of that sex are not satisfied with this gradual amelioration of their *legal condition*. They sigh for *political rights*; and are holding conventions to devise ways and means of securing them. They are no longer contented with their influence as wives, mothers, sisters, daughters, authors, teachers, and companions, — an influence every day increasing, and where the sphere is boundless, — but they seek to be

voters, legislators, governors, judges, and, for aught I know, generals and commodores. The number of aspirants may not yet be large ; but they already make a very considerable noise, and I think the party is likely to grow. For when we come to the question of *abstract natural right*, I am unable to find a reason for excluding the better half of the human race from the transcendent right of political equality, against their will. But the question of *expediency* is a very different one, and may safely be left to the taste of the refined portion of the sex. I think that, if there were no constitutional exclusion, they would instinctively exclude themselves. I do not believe they wish to be unsexed, and turned into Amazons, by the rude and coarse encounters of the bar-room, the hustings, the stump, the caucus, or even the senate, as senates are now. Think you that Otway, if he had often seen women in these manly predicaments, could have pronounced upon that sex the splendid panegyric found in *Venice Preserved* ?

“ O woman ! lovely woman ! Nature made thee
 To temper man ; we had been brutes without you !
 Angels are painted fair to look like you ;
 There ’s in you all that we believe of heaven ; —
 Amazing brightness, purity and truth,
 Eternal joy, and everlasting love ! ”

No, no, when true women can be such “ ministering angels ” in private and domestic life, — so heightening all mortal joys, and lessening all mortal

sorrows, — there is no danger of their descending from this blessed sphere into the foul arena of politicians and demagogues.

In connection with this subject of social reform, I may here refer to the matter of CONSTITUTION-MAKING, in which the public mind is just now unusually exercised. The probability is, that, ere long, — so ephemeral are these productions, — a constitution which has seen ten years of active service will deserve a place in some museum or curiosity-shop. And to this, in the abstract, there may be no objection. Even if constitutions be made no better, — provided they be made no worse, — the people are furnished with an innocent excitement, and ambitious young men have an uncommonly good opportunity for display. But what are the probabilities of improving our constitutions, with all the present environments? This matter of constitution-making, properly considered, is a very serious thing, — the most serious that a people can engage in. When they have uttered their voice in this manner, they have done the most sovereign act this side of heaven. For weal or woe, they have pronounced the most authoritative earthly fiat. Their voice thus uttered is not, indeed, the voice of God, as we so often hear said, but comes nearest to it of any voice on earth; for they thus establish a fundamental law, by which all powers and privileges are limited and defined. They thus reduce to prac-

tice what was once a theory only, they actually make a social compact. If they make a good one, patriotism, philanthropy, can no farther go. But if they make a bad one? The stake, to say the least, is tremendous; and unless the evils to be redressed are great, the evils to be induced may be more than a counterpoise. The tendency now is to make radical innovations, which may or may not turn out to be improvements. But their aim is one which, if these parchments could accomplish it, would make the earth a paradise. If the human condition could be perfectly equalized, so that there should be no high or low, no rich or poor, no master or servant, Eutopia would be no longer a dream. And this kind of equality is what the reformers chiefly seek to bring about, by means of new constitutions. They are not content that all shall be born equal, — that is, with *equal rights*, — but, as far as possible, they would have all remain equal *in condition*, at least with respect to property. To this end, some would have an absolute community of goods; others would limit the quantity which may be owned by an individual; and others, again, would exempt a certain amount from liability for debt; and so on. Now, in all these benevolent projects, it seems to me that two things are lost sight of. In the first place, no two human beings ever were, in point of fact, exactly equal, either mentally or physically; and from this it follows, in the second

place, that to keep men equal in condition must be the work of constant force. Now, freedom is quite as dear and precious as equality; and if you leave men free to act, they will be free to differ, and will differ. So that inequality of condition, being the natural offspring of liberty, will, in spite of constitutions, always form a part of the human lot. And this inevitable inequality will never cease to furnish a pretext for declaiming against aristocracy. Those who happen to be below will naturally envy those above, and rail against — they know not what, and therefore call it fate, for making the distinction.

Now, aristocracy — a much abused word — literally means a *government of the best*; and one might fairly presume that such would be *the best government*. But these sticklers for actual equality do not appear to think so. They claim that all classes, not only shall be represented, but shall actually participate in the government. If, for example, in this model republic of ours, there were a class of knaves or fools, that class would claim to be fitly represented in Congress. And were it not forbidden to speak evil of dignities, one might whisper to his neighbour that this claim has been fully recognized. This, at least, may be openly asserted, that every man in Congress is not the best man in his district, — and so generally of the other departments; and hence, that our government, as at present carried on, is not obnoxious to the im-

putation of aristocracy, in its literal signification. The truth is, that office now goes chiefly to those who most energetically seek it ; and the best men are not likely to be office-seekers. There is, or was, in manly and honorable bosoms, a sort of old-fashioned prejudice against soliciting office. The rule was, that office should seek the man for his worth, and not he the office for its worth. Then, it was the man who did honor to the office ; now, it is the office which does honor to the man, — if, indeed, there be now any honor in the matter. O, it is a humiliating spectacle to see the crowds of hale, hearty, robust men, who daily knock at the doors of power, and, like the daughters of the horseleech, cry, “ Give ! Give ! ” I have tried to imagine some of our great forefathers — the Washingtons, the Adamses, the Jays — asking for votes or cabinet appointments. But the thing is unimaginable : —

“ Theirs was no common party race,
Jostling by dark intrigue for place.”

But now there is no such squeamish delicacy. Our prominent men do not scruple to put forth what they call their *claims* to office. And forthwith they define their position, make their platform, give their pledges, and sometimes trumpet forth their own transcendent merits from every convenient stump. Verily, there is no occasion to declaim against aristocracy, while these practices prevail. Would that there were ! For, at

the risk of saying something which may seem very unpopular, I long to see a veritable aristocracy established all over the world. If the day shall ever come when our social and political machinery shall be so harmoniously adjusted, that, for each thing to be done, the very man of all others best fitted to do it shall be selected to do it, and shall do it, whether it be to make laws or administer them, to command fleets or armies, to educate youth, or till the ground, or whatever else it may be, — when all men and women shall come to occupy the exact places for which they are best qualified, — then, as it seems to me, and not till then, shall we have the best government imaginable. And if mortals were angels, or if angels were to govern mortals, I think the state of things on earth would be something like this. Then we should have a real aristocracy, which would, at the same time, be the most perfect democracy.

There is, however, a spurious aristocracy, for which I feel no admiration. I mean the miscalled aristocracy of wealth. It is this which has brought the word into such general opprobrium. Nowhere, probably, in the civilized world, is so much consequence attached to wealth as in this country. We plain republicans have a strange propensity to worship the golden calf. He is the best man, in the estimation of too many of us, who can count the most dollars. The old apophthegm was, that knowledge is power ;

but now wealth is power. Let the contest be between wealth and talent, and wealth will carry the day. Talent cannot buy either puffs or votes, and wealth can command both. There is no argument more persuasive than the ingot. And hence the insane ardor with which we pursue wealth as the end of all endeavour. Hence the rush of crowds to California, for example, on the first report of gold mines there.

“ Mammon led them on ;
 Mammon, the least erected spirit that fell
 From heaven ; for e’en in heaven his looks and thoughts
 Were always downward bent, admiring more
 The riches of heaven’s pavement, trodden gold,
 Than aught divine or holy, else enjoyed
 In vision beatific.”

Do not, however, understand me as joining in the vulgar hue-and-cry of the poor against the rich. Up to a certain point, — that of entire sufficiency for all the rational enjoyments of immortal beings, — the pursuit of wealth is laudable and praiseworthy. We should be “worse than infidels” to stop short of this, having the power to reach it honestly. But when we pass this point, and hoard up more than we can rationally enjoy, not with a view to the endowment of some beneficent charity, such as this college has so often enjoyed, but simply for the purpose of flaunting and purse-proud ostentation while we live, and of leaving a legacy of inevitable ruin to our children when we die, — then it is that we make wealth odi-

ous, and justify that bitter warfare beginning to be waged against it. Then Dives and Lazarus begin to teach their solemn lessons. Then rises up in the overwrought heart of toiling poverty the very natural sentiment of Burns: —

“ If I ’m designed yon lordling’s slave,
By nature’s law designed,
Why was an independent wish
E’er planted in my mind ? ”

From the business of constitution-making, the transition is natural to that of LAW-MAKING in general. At a vast trouble and expense, “ we, the people,” not finding it convenient to make laws ourselves, every year or two elect a few men out of our great number, to do this work for us. Of course we send picked men on so grave a mission ? Yes, in one sense, they are picked ! If we want a coat made, we look for the best tailor in the neighbourhood, and thereby get a good coat. But when we want a law made, what sort of men do we pick up for this great business ? Generally the noisiest politicians to be found in the district, who, instead of making laws for us, spend their breath, and our money, chiefly in making capital for themselves. And no wonder ; for what do these Solons know of law ? They labor in their true vocation, working at what alone they understand. I well remember the first time I entered one of our legislative halls. I was then fresh from the study

of our beautiful theory of representation, which taught me that I was to gaze upon the assembled wisdom of the state, engaged in the sublime work of "prescribing rules of civil conduct, commanding what is right, and prohibiting what is wrong." Brennus, the Gaul, could not have felt emotions of more awful reverence, in the anticipation of meeting the hoary and stately Senators of Rome, than I did. Nor could his amazement have been greater, at being frustrated by the gabbling of those patriot geese outside of the Roman capital, than mine was, at what I saw and heard within an American capital. That capital was not at Washington; but I think the same thing might happen even there to one as unsophisticated as I was. I think that the ingenuous youth, who should visit Washington in the expectation of seeing the pure and concentrated essence of American wisdom, would come away disappointed. For, excepting the first three or four sessions, what has Congress done in the way of law-making, in the course of sixty years, except to create offices and provide emoluments, — to make presidents and secure places? With the exclusive power, for example, to regulate commerce, — a great and beneficent power, — what national system of commercial law has been provided, except with a single view to revenue, — laying duties, but not doing them? And the same is true of State legislation. Nowhere has there been any well di-

rected and persevering effort to provide a general and complete system of law, bearing an American impress. I have said that not one tithe of the law which governs us has ever received a legislative sanction ; but I might have said not one fiftieth. Verily, theory and practice are quite different things.

A class of reforms connected with PUNISHMENT has for many years excited great interest. No one hears the name of a Howard, a Fry, or a Dix, without experiencing the most grateful emotions ; and no one names them without praise. Their "circumnavigations of charity" make us think better of the whole race. And yet I sometimes fear that, in our humane and Christian zeal to ameliorate the condition of criminals, we may come to lose sight of the primary object of all punishment, which I suppose to be the prevention of crime. If we leave this out of view, and regulate punishment with a principal aim at reformation, I know of no warrant for the infliction of punishment. Now it can hardly be called punishment, if you make the condition of a criminal better than he ever knew before. If we convert what were once called prisons into schools of reform, or agreeable retreats, so as to make the condition of the convict vastly more comfortable and eligible than that of the great mass of the virtuous and laboring poor, this would seem to be creating an inducement to crime, rather than a pre-

ventive. It is clear to me that punishment should either be made effective as punishment, or else abolished altogether; and while I would be the last to advocate cruelty or barbarity, I should be very cautious about making punishment an agreeable thing. But what, then, — some one may ask, — would you punish by hanging or whipping? Or what would you do? I answer, that I would not take life in any case whatever, because I doubt the right to do so; because I dare not pronounce an irrevocable doom upon testimony which, however seemingly conclusive, may possibly be false; because I think there are other modes of punishment more effective to prevent crime; and because, whatever be the merits of this question, public opinion is now so firmly set against the death-penalty, that the execution of it has become almost an impossibility. Nor would I, in any case, make use of the lash; because the effect is to brutalize both the whipper and the whipped. Still less would I resort to fines, because this amounts to a sale of criminal licenses, for which the rich can pay without feeling it, while the poor cannot afford such luxuries. No. In all cases, I would make *deprivation of liberty* the consequence of crime; because the offender has broken the great condition upon which liberty is guaranteed; because this is the most equal of all punishments, since all love lib-

erty nearly alike; and because, by varying the circumstances of imprisonment, it may be graduated to meet all degrees of enormity. But in every case I would make the prison a thing to be feared. And I would bring solitude to the aid both of punishment and reform. For while I cannot regard reform as the primary object of punishment, I should strive to make it a concomitant, whenever possible. And this, by the way, is another reason why I would not inflict death upon any offender; since I see no tendency in this process to reform him. But if there be any mode of punishment in which prevention and reform can be combined, it is solitary imprisonment. In the lonely cell, cut off from all intercourse with other criminals, crime can neither be learned nor taught; and there, if anywhere, good thoughts may be nurtured, and good lessons given.

Another reform, which gladdens the heart whenever mentioned, has reference to the *INSANE*. We have learned that it is possible to "minister to a mind diseased," — that kindness can control the wildest maniac, when cruelty would only make frenzy more frenzied. I know of nothing under the broad heavens, which so demonstrates the omnipotence of all-subduing Love, as the present discipline of our lunatic asylums. But in connection with this topic of insanity, there is one thing, as it seems to me, deeply to be deplored. I refer to the use, or rather

the abuse, made of it, as an excuse for crime. That a man whose mind is either so deranged or so enfeebled as not to be conscious of doing wrong should not be held accountable, is as much the dictate of justice as of humanity. But in recent times there has grown up a theory of *moral insanity*, according to which, without any obscuration of the intellect, the moral sentiments may become so perverted, that a person so affected cannot avoid committing crime, knowing that it is crime; and because of the existence of this irresistible impulse, such offender is to stand excused. Now I shall not undertake to deny or admit the existence of moral insanity as a physiological fact, although I can scarcely conceive of such a sinless monster as it presupposes. But to introduce such a theory into criminal jurisprudence, I regard as one of the most dangerous innovations of our day. To my apprehension, it is neither more nor less than making depravity an excuse for crime; and the greater the enormity of the act, the greater becomes the presumption of inculpability. Let a man act like a devil incarnate, and he shall go free of punishment, because no sane man would so act. In other words, every very wicked person is to be regarded as insane, — an object of pity, but not of punishment. Poor demented Nero, for example, could not help fiddling while Rome was burning; and Lucre-

tia Borgia is entitled to our tenderest sympathies, because she was impelled to her monstrous crimes by an irresistible impulse. I believe this strange theory originated in France, where the Marats, the Dantons, and the Robespierres are beginning to be regarded as innocent victims of the excitement of their day, and not at all the demons we have been accustomed to consider them.

Having spoken thus of some of the prominent reforms of our day, — but leaving many of the best unmentioned, for want of time, — I turn for a moment to one of the chief instrumentalities, namely, ELOQUENCE, for the purpose of remarking, that I can think of nothing which more needs reforming. Using the term eloquence in its broadest sense, as including what is written as well as spoken, it should be the greatest moving power in society. He who can write or speak effectively wields an influence for good or evil, which involves a tremendous responsibility. If for good, we realize Moore's description: —

“Thy words had such a melting flow,
And spake of truth so sweetly well,
They dropped like heaven's serenest snow,
And all was brightness where they fell.”

But if for evil, Belial may be the prototype: —

“He seemed
For dignity composed, and high exploit;
But all was false and hollow; though his tongue
Dropped manna, and could make the worse appear

The better reason, to perplex and dash
 Maturest counsels : for his thoughts were low,
 To vice industrious. Yet he pleased the ear."

Now it has seemed to me that the eloquence of our day falls very far short of the influence which it once exerted, and might still exert. And I attribute this to two causes.

The first is the miserably low moral tone adopted by the great majority of those who address the multitude, whether through the press or from the stump. We have in constant operation, night and day, working by steam, what has been significantly denominated a SATANIC PRESS. Through penny newspapers, sold by boys at every corner, it speaks every day to millions, and appeals to their lowest passions and propensities. Whatever will be grateful to the most depraved appetite, or minister to the most degraded taste, is the choicest matter for its columns. It allies itself with policemen and outlaws, and thus invades the inmost sanctuaries of private life. Wherever a disgusting or revolting fact can be spied out, it is forthwith emblazoned to every eye; and when there is no such fact, fiction is resorted to for the levying of black mail. Nor does this press speak through newspapers alone; but also, and with the same pernicious effect, through that host of poisonous pamphlets which we call CHEAP PUBLICATIONS. Cheap, indeed? Why, nothing is so

dear. For consider what loads of pestiferous trash, all reeking with corruption, this cheap press sends daily forth to pollute and defile the minds of that immense class of readers to whom cheapness is a strong temptation. Truly I know of nothing so demoralizing, so flagitious, as this portion of the press. When I think of its wide-spread mischief, I almost question whether the art of printing has proved a blessing.

And then our stump speaking, — how much better is that? I have rarely heard a so-called popular speaker, who assumed an elevated tone. Instead of aiming to bring his hearers up to his level, his effort is — if effort be required — to descend to the lowest level he can imagine in his audience; and he generally manifests “a great alacrity in sinking.” No wonder that shrewd observers have declared the curse of our country to be our popular speakers. For unquestionably, next to the Satanic Press, the greatest pest with which we are afflicted is our fluent demagogues. I sometimes think Homer was a prophet as well as a poet, and must have had one of our stump orators before his eye when he depicted Thersites, — that inimitable type of the whole race of speaking charlatans. What reader ever blamed Achilles for killing the wretch with that memorable blow of his fist? It could hardly be called *homicide* to do the same thing now. I see

no salvation for such characters, except upon the hypothesis of moral insanity, before referred to. Johnson must have been listening to orators of this kind, when he denounced patriotism as “the last refuge of a scoundrel.” For these men overflow with love for the poor, downtrodden people, who, but for their enlightenment, would probably never know how much they are imposed upon.

But still another cause of inefficiency in our eloquence is its want of concentration. For undoubtedly, whatever definition we may give to eloquence, its prime excellence must ever be to produce the greatest effect by the fewest words. But how is it with our so-called orators? I speak of the great majority, for, of course, there are glorious exceptions. But is it not generally true, that they so spin out, or rather dilute, their speeches, that, in order to get at their drift, you must cull grains of wheat from bushels of chaff? I know of no better definition of one of these speeches, than that which geometers give of a line, namely, *length, without breadth or thickness*. And if, together with this scattering propensity, there happen to be a smattering of learning, we have the speaker described in Hudibras: —

“ His speech

In loftiness of sound was rich ;

A Babylonish dialect,

Which learned pedants much affect.

It was a party-colored dress
 Of patched and piebald languages;
 'T was English cut on Greek and Latin,
 Like fustian heretofore on satin."

I look upon this disposition to elongate, both in writing and speaking, as one of the worst habits of the day. The earnest seeker after knowledge cannot help feeling that life is too short to permit any of it to be wasted upon such windy effusions. Has it occurred to any one to compare the debates in the Convention which formed the Federal Constitution with any of the recent Congressional debates? As the former are reported by Madison, it does not appear that one long speech was made during the whole sitting of that convention, though composed of the ablest men, and occupied with the gravest subjects, of which we can form any conception. Washington made but a single speech, and that a very short one. Another illustration may be found in the "Grand Consult" in Pandemonium, as imagined by Milton. I know not that the records of ancient or modern eloquence furnish so perfect a model of debate as this. Yet the whole does not occupy one tithe of the space of an average speech in Congress; which, when the speaker is not wisely subjected to the Procrustes application of the *one-hour rule*, is apt to occupy at least six hours; and the debate itself, unless justly decapitated by the guillotine of the *previous question*, at

least as many weeks. In fact, I think the very necessity of thus gagging our orators in order to choke them off, is a significant proof of the extent of the evil. Nor is the case a whit better in our courts of justice. The first tribunal of the land has lately been compelled to adopt, and rigidly enforce, a *two-hour rule*, in order to get rid of the same intolerable nuisance. And I trust its example may be followed by all inferior courts; for I do not believe there ever was a case, which, with proper preparation, might not be better presented in two hours than in ten. Why now, more than of old, should men expect to prevail by their "much speaking"? For when you have piled up words as high as the pyramids, they can only serve to entomb ideas.

But, that I may not provoke the condemnation I denounce on others, let me bring these rambling speculations to a close, by turning for a moment from the present to the future. What shall be the result of these world-wide agitations, these daring experiments? Will present evil be compensated by coming good? Of this I do not, I dare not doubt. After this storm, a calm will come. Out of these ashes a phoenix will soar. From this present chaos order will spring. So religion teaches, and history proves. In the all-wise providence of God, human progress has never been constant. Very often have the prospects of humanity been disastrously eclipsed, and the hopes

of philanthropy shrouded in gloom. But always has the darkness been followed by brighter days. Always, in this tide of human affairs, has the flood been far greater than the ebb. In the long and fearful struggles of our race, history records many more victories than defeats. The movement, on the whole, has been ever onward. The ISLANDS OF THE BLESSED have become more distinctly visible, as each reckoning has been made on the log-book of Time.

I do not from this infer perfectibility, but progress. I rather rejoice in the belief that a state of perfection will never be reached on earth; but that, while ages after ages shall circle away, as in one eternally ascending spiral, no time will ever come when something better may not be hoped for,—when there shall be no subject for reform, no field for philanthropy, no stimulus to effort. For, O, how weary and objectless would be the march of generations over a boundless plane!

Meantime the great want of the age is MODERATION. The lesson we should draw, from the survey we have taken, is neither to be obstinately conservative, nor rashly progressive. The danger is that we shall become intoxicated by our amazing physical triumphs. Because, within the memory of most of us, the lightning has been harnessed to the newsman's car, and the steam-engine has not only brought the ends of the earth into proximity, but

has also provided a working power, which, requiring no nutriment, and susceptible of no fatigue, almost releases living creatures from the necessity of toil, — because of these most marvellous discoveries, we are in danger of believing that like wonders may be achieved in the social and moral world. But be it remembered that, in all our discoveries, no substitute has been found for conscience, and no machine to take the place of reason. The telegraph cannot legislate, nor the locomotive educate. The mind is still the mind, and must obey its own higher laws. Our most pressing needs are such as no mechanism can supply. What we most lack is true, earnest, sincere, faithful, loyal, self-sacrificing men. Without these, it is in vain that we extend our territory from ocean to ocean, and quarry gold as we do rocks. These physical accessions, coming so suddenly upon us; do but increase our peril. Adversity we might bear, and be the better for it. But how shall we bear this gush of seeming prosperity? Seeming, I say, because time alone can determine whether it is real. If, with all these excitements, we do not become a nation of reckless adventurers, — gamblers, perhaps, would be the proper word, — if we do not cut ourselves entirely loose from our ancient moorings, but still hold fast to our integrity, our very continence will prove that there is still some sterling virtue left. For never was there so much reason for the prayer,

“Deliver us from temptation.” After all our conquests, the most difficult yet remains, — the victory over ourselves. We have now to answer, under untried difficulties, that gravest of questions, “What constitutes a state?” And the answer must be like that which was given long ago: —

“Not high-raised battlement or labored mound,
 Thick wall or moated gate;
 Not cities proud, with spires and turrets crowned;
 Not bays and broad-armed ports,
 Where, laughing at the storm, rich navies ride;

 No; — men, high-minded men, —

 Men who their duties know,
 But know their rights, and knowing, dare maintain.”

LIBRARY OF CONGRESS



0 027 272 361 8